



(Billing Code 5001-06-P)

DEPARTMENT OF DEFENSE

Defense Acquisitions Regulations System

48 CFR Part 225

RIN 0750-AH50

**Defense Federal Acquisition Regulation Supplement; Trade
Agreements Thresholds (DFARS Case 2012-D005)**

AGENCY: Defense Acquisition Regulations System; Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to incorporate adjusted thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative. Additionally, this rule includes language in prescriptions for use of contract clauses intended to clarify their applicability to commercial items.

DATES: Effective Date: [Insert date of publication in the FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703-602-0328.

SUPPLEMENTARY INFORMATION:

I. Background

Every two years, the trade agreements thresholds are adjusted according to a pre-determined formula set forth in the agreements. The United States Trade Representative has specified the following new thresholds in the Federal Register (76 FR 76808 December 8, 2011):

Trade Agreement	Supply Contract (equal to or exceeding)	
		Construction Contract (equal to or exceeding)
WTO GPA	\$202,000	\$7,777,000
FTAs:		
Australia FTA	77,494	7,777,000
Bahrain FTA	202,000	10,074,262
CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Guatemala, Honduras, and Nicaragua)	77,494	7,777,000
Chile FTA	77,494	7,777,000
Morocco FTA	202,000	7,777,000
NAFTA:		
–Canada	25,000	10,074,262
–Mexico	77,494	10,074,262
Peru FTA	202,000	7,777,000
Singapore FTA	77,494	7,777,000

II. Discussion and analysis

This final rule implements the new thresholds in the clause prescriptions at DFARS 225.1101 and 225.7503.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1 and 41 U.S.C. 1707 and does not require publication for public comment.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 225

Government procurement.

Ynette R. Shelkin

Editor, Defense Acquisition Regulations System

Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 225 is revised to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

2. In section 225.1101, revise paragraph (11)(i) to read as follows:

225.1101 Acquisition of supplies.

* * * * *

(11)(i) Except as provided in paragraph (11)(ii) of this section, use the clause at 252.225-7036, Buy American Act-Free Trade Agreements-Balance of Payments Program, instead of the clause at FAR 52.225-3, Buy American Act-Free Trade Agreements-Israeli Trade Act, in solicitations and contracts for the items listed at 225.401-70, including acquisitions of commercial items or components, when the estimated value equals or exceeds \$25,000, but is less than \$202,000, and a Free Trade Agreement applies to the acquisition.

(A) Use the basic clause when the estimated value equals or exceeds \$77,494.

(B) Use the clause with its Alternate I when the estimated value equals or exceeds \$25,000 but is less than \$77,494.

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3. In section 225.7503, revise paragraphs (a)(1) and (b) to read as follows:

225.7503 Contract clauses.

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(a)(1) Use the clause at 252.225-7044, Balance of Payments Program-Construction Material, in solicitations and contracts for construction to be performed outside the United States, including acquisitions of commercial items or components, with a value greater than the simplified acquisition threshold but less than \$7,777,000.

* * * * *

(b)(1) Use the clause at 252.225-7045, Balance of Payments Program-Construction Material Under Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with a value of \$7,777,000 or more, including acquisitions of commercial items or components.

(2) For acquisitions with a value of \$7,777,000 or more, but less than \$10,074,262, including acquisitions of commercial items or components, use the clause with its Alternate I, unless the acquisition is in support of Afghanistan.

(3) If the acquisition is for construction with a value of \$10,074,262 or more and is in support of operations in Afghanistan, use the clause with its Alternate II.

(4) If the acquisition is for construction with a value of \$7,777,000 or more, but less than \$10,074,262, and is in support of operations in Afghanistan, use the clause with its Alternate III.

[FR Doc. 2012-1487 Filed 01/27/2012 at 8:45 am; Publication Date: 01/30/2012]